IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 258 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDUBHAI DEVCHAND GARI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :

NOTICE SERVED BY DS for Appellant(s) : 1,MR PM DAVE for Appellant(s) : 1,
MR.BHATE, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,
MR RAJKUMAR N VORA for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 27/07/2007

ORAL JUDGMENT

The present appeal is preferred under the provisions of Section 374 of the Code of Criminal Procedure challenging the legality and validity of

the order of conviction and sentence passed by the learned Additional Sessions Judge, Godhra, in Sessions Case No.76 of 1992 on 28th January, 1994. The appellant has challenged the said judgment and order of conviction and sentence by raising various grounds as mentioned in paragraph 4 of the memo of appeal. Mr.Dave, learned Counsel for the appellant has taken this Court through the various grounds of challenge so also the evidence led during the course of trial.

2. The accused was initially charged for the offence punishable under Section 302 of the Indian Penal Code. However, at the conclusion of the trial, the learned trial Judge decided to acquit the accused from that grave charge of offence punishable under Section 302 of the Indian Penal Code and convicted the appellant-accused for the offence punishable under Section 323 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for one year. No sentence of fine was imposed by the trial Court.

3. Mr.Bhate, learned A.P.P., has submitted that there is no element of either error or perversity in

the finding recorded by the learned trial Court. The decision is based on sound reasons and the learned trial Judge has discussed the fact in detailed and has also assigned the reasons that why the accused deserves to be convicted for the minor offence punishable under Section 323 of the Indian Penal Code and therefore the appeal deserves to be dismissed.

4. The alternative argument advanced by Mr.Dave is that if the Court is inclined to upheld the conviction recorded by the learned trial Judge then the Court should consider the period of imprisonment that has been undergone by the appellant-accused as adequate and sufficient punishment because the offence punishable under Section 323 of the Indian Penal Code is neither grave offence and it has been emerged that the quarrel had taken place suddenly and that too for a petty discussion. No grave motive was alleged against the appellant even by prosecution and the learned trial Judge on the contrary ought to have given benefit of Probation of Offenders Act to the appellant-accused. It is submitted that one another alternative was also open for the trial Court to impose some more amount of fine and out of the total amount of fine, some amount could have been given to

the mother and father of the deceased. He has also drawn the attention of the Court to the socioeconomic background of the appellant-accused and the family of the person who succumbed to the injury during the so-called scuffle.

5. Mr.Bhate, learned A.P.P., has fairly submitted that this Court, if alter the punishment to the minimum, that is, reduce to the period already undergone and by imposing some higher amount of fine, then it would be appropriate keeping in mind the time that has gone in between the order of conviction and today when the appeal has been taken up for final disposal. True it is the Apex Court has observed that the time taken by the Court in conducting trail or in hearing the appeal should not come in the way while deciding the quantum of punishment and if any grave or serious offence found to have been committed by the accused then the adequate punishment should be imposed. But, in the present case the offence found proved against the accused is punishable under Section 323 of the Indian Penal Code. This offence cannot be said be either grave or serious. The death of deceased-Shankar was incidental and there was no nexus found between the injury and the death. It was

not possible for the trial Court that on the strength of the evidence led by the prosecution to impute any knowledge or intention and therefore only the appellant has been acquitted from the grave charge of the offence punishable under Section 302 of the Indian Penal Code.

6. The appellant-accused was asked to face the following charge which is the gist of the case of the prosecution.

“1. That you accused and the deceased, both had gone for labour work at Surat prior to one year of the incident and at that time you accused lent Rs.100/- to the deceased. That you accused time and again demanded Rs.100/- from the deceased but deceased had not given back. For this reason on 4/11/1991 at about 16:00 hours, deceased was going to his village Mandlipura from Zalod and at the same time you accused also going to Zalod from Mandalipura and during that time you accused met the deceased near Jalai Mata situated on Mandalipura Road at about 17:00 hours and demanded money from the deceased that was borrowed to him, quarreled with him, gave fist blows and caused injury on his liver. Due to said injury, deceased-Shankar died. As you accused caused injury to deceased, were sufficient to cause death in ordinary course of nature and thereby committed offence punishable under Section 302 of the Indian Penal Code.”

7. After some deliberation, Mr.Dave has submitted that he is not pressing the appeal on merits so far as conviction recorded by the learned trial Judge is concerned but at least this Court should alter the punishment saying to be harsh in view of the totality of the facts and circumstances of the case emerging from the evidence.

8. The facts of the prosecution case placed before the trial Court explains that the accused may not have even thought of killing deceased-Shankar. Event of scuffle and infliction of simple injury has no nexus with the death. The death is because of rupture of liver. The doctor has described the liver in the postmortem note and it was found to be enlarged. A person who was carrying an unhealthy liver succumbed to the rupture of liver and such injury was possible even by a simple fall on the earth. So, the medical evidence led by prosecution would positively help the appellant-accused in getting the substantive punishment reduced to minimum.

9. While replying the query Mr.Dave has

submitted that the accused has remained in jail pending trial for about 30 days as he was initially arrested for the offence punishable under Section 302 of the Indian Penal Code. If, the appellant-accused is asked to go to jail after several years, that is, more than about 13 to 14 years, is likely to result into serious prejudice to great inconvenience to the family members of the accused. The accused has incurred more social responsibility in between this period. He has to maintain his wife and old mother. He is doing some agriculture work and simultaneously labour work. In the same way, the family of the victim is also very poor. It appears that an amount of Rs.100/- was very big amount for both the families in those days. This fact itself is the real reflection of the socioeconomic status of both the families.

10. So, keeping in mind the above facts situation of the family of the accused-appellant and the victim, the Court is inclined to accept the submission advanced by Mr.Dave and to allow the appeal partly by imposing the amount of fine and placing the substantive sentence to the period already undergone.

11. In the result, present Criminal Appeal is partly allowed. While confirming the judgment and order of conviction for the offence punishable under Section 323 of the Indian Penal Code, passed by the learned Additional Sessions Judge, Godhra, in Sessions Case No.76 of 1992 on 28th January, 1994, the order of sentence is modified. The substantive sentenced imposed by the learned trial Court is reduced to the period already undergone.

11.1 So far as the sentence of fine is concerned, the same is modified to the effect that the appellant shall pay the fine of Rs.12,000/- (Rupees Twelve Thousand Only) and in default of making payment of fine, he shall undergo simple imprisonment for six months. The appellant shall pay fine of Rs.12,000/- (Rupees Twelve Thousand Only) before the concerned trial Court within a period of 30 days from today, failing which the learned trial Judge shall issue non-bailable warrant against the appellant to secure his custody and thereafter he shall be sent to prison to serve the in default imprisonment. On depositing the amount of fine by the appellant-accused, the learned trial Judge shall issue Notice to the father

and mother of the deceased viz., Limbabhai Khatarbhai Gari and Radiben w/o. Limbabhai Khatarbhai Gari and shall pay Rs.10,000/- (Rupees Ten Thousand Only) to them on proper identification and the remaining amount of fine of Rs.2,000/- (Rupees Two Thousand Only) shall be deposited with the State Exchequer.

11.2 If the parents of the victim are ready to accept the amount of compensation by way of cheque in the joint name then the payment shall be made accordingly or otherwise both of them shall be given a cheque of Rs.5,000/- (Rupees Five Thousand Only) each.

11.3 At present the appellant is on bail. Bail Bond executed by the appellant is cancelled. However, he shall be treated as a person deemed to be on bail for a period of thirty days enabling him to arrange for the amount of fine and to pay the same before the trial Court. Order and Direction accordingly. Direct Service to the Counsel appearing for the appellant.

(C.K.BUCH, J.)

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